



June 16, 1999

Mr. Thomas G. Ricks
President
The University of Texas Investment Management Company
210 West Sixth Street, Second Floor
Austin, Texas 78701

OR99-1670

Dear Mr. Ricks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124167.

The University of Texas Investment Management Company ("UTIMCO") received a request for copies of legal bills from a certain law firm. You seek to withhold portions of the responsive information under sections 552.101, 552.104, and 552.107 of the Government Code.

Section 552.104 excepts from required disclosure "information which, if released would give advantage to competitors or bidders." Although the exception may not be claimed to protect a governmental body's "competitive advantage" where it is not in competition with private enterprise, if the governmental body is authorized by law to invest in securities, it may be deemed a competitor with respect to those investments for purposes of section 552.104. Open Records Decision No. 593 (1991). This office has previously determined that UTIMCO, by virtue of its legal authority to invest Permanent University Fund ("PUF") funds, may be considered a "competitor" for purposes of section 552.104 with respect to those investments. *See, e.g.,* Open Records Letter 92-613 (1992). We have examined the material for which you claim the protection of section 552.104. We conclude that you may

withhold under section 552.104 the descriptive language you have marked in the submitted fee bills.¹

You also contend that portions of the responsive information constitute personal financial information protected under the common-law privacy aspect of section 552.101. Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373. Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. *Id.* at 4; *see also* Open Records Decision Nos. 600 (1992); 545 (1990). We have examined the information which you claim is personal financial information protected by common-law privacy. In the first place, although you claim that the records at issue reflect information disclosed to UTIMCO in personal financial statements from "outside directors," the information at issue does not directly identify such individuals. Moreover, we believe that there is a legitimate public interest in the material, relating as it does to public officials' potential conflicts of interest. Therefore, the second prong of the privacy test is not met here. You may not withhold any of the responsive information under common-law privacy.

You also assert that portions of the information may be withheld under section 552.107(1), which protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of

¹Please note, however, that to the extent UTIMCO has released or agreed to release information in such "descriptive language," it may not now withhold such information. *See e.g., Austin American Statesman*, March 30, 1999, at B1 ("UT's money manager to disclose investments"). *See also* Gov't Code § 552.007 (if information is voluntarily made available by governmental body, it must be made available to any person). We also note that legislation adopted in 1999, to take effect September 1, 1999, will limit information which may be withheld from attorney fee bills to that protected by the attorney-client-privilege. *See* S.B. 1851, Acts 1999, 76th Leg., R.S., §5 (amending Gov't Code 552.022(16)).

Professional Conduct.” See Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege.

We have examined the information for which you seek the protection of section 552.107(1), and conclude that you have not demonstrated that any of that information constitutes attorney advice or confidential client communications within the ambit of section 552.107(1). Accordingly, you may not withhold any information under section 552.107(1). Except as noted above, you must release the submitted information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/nc

Ref.: ID# 124167

encl. Submitted documents

cc: Mr. Stephen Lisson
Initiate!
P.O. Box 2013
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(w/o enclosures)